INDEX

Page

Opinions below 1

Jurisdiction 1

Questions presented 1

Statutes involved 2

Argument 2

Conclusion 5

CITATIONS

Cases:

Ferris v. Chic-Mint Gum Co.,
14 Del. Ch. 232-239; 124 A. 577 3

Board of Supervisors v. Hart,
210 La. 78, 93; 26 So. 2d 361 3

Spokane County v. United States,
279 U. S. 80, 91 3

Statutes:

Sec. 3672 (26 U. S. C., 1946 ed., Sec. 3672) 2

Sec. 3466, (31 U. S. C. Sec. 191 [1946]) 3

BLEED THROUGH- POOR COPY

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 830

UNITED STATES OF AMERICA, PETITIONER

v.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Errors of Connecticut (R. 17-23) is reported in 139 Conn. 363, 94 A. 2d 10.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

Whether the Federal tax lien, admittedly subordinate to two mortgages and a judgment lien, (P.5), is superior to municipal tax liens, which are admittedly superior to the said mortgages and judgment lien.

Citations to Transcript of Record indicated by R.
Citations to Petition indicated by P.

STATUTES INVOLVED

The pertinent portion of the statutes involved are set forth in the Petition at pp. 20-22.

ARGUMENT

The issue involved is not the seemingly wide one of the priority of Federal taxes over municipal taxes. It has narrowed down to the definition of the Federal statute in relation to the circumstances here pertaining. In that sense, it was for the state court to decide, and its decision was manifestly correct.

I

THE DECISION BELOW IS CORRECT

The conclusion of the Supreme Court of Errors of Connecticut, after remarkable rationalizing of the problem presented, is clearly and lucidly sound and workable. The gist of that Court's opinion is stated in the following excerpt:

> "Moreover, if priority were accorded to the Federal liens over those of the municipality, the result would have to be that either the rank of the municipal liens would be reduced below that of the mortgages and judgment lien, which would be in violation of the State law, or the position of the Federal liens would be moved up to a place ahead of the mortgages and judgment lien, in violation of Sec. 3672. It can hardly be assumed that the Congress intended any such result. The only reasonable interpretation of Sec. 3672 is that the Congress, in enacting it, ex-

BLEED THROUGH– POOR COPY

> pressed the intention that Federal liens should be subordinated to such mortgages and judgment liens as are described therein and, consequently, subordinated to such other incumbrances as have priority over those mortgages and judgment liens. *Ferris v. Chic-Mint Gum Co.* 14 Del. Ch. 232, 239, 124 A. 577; *Board of Supervisors v. Hart,* 210 La. 79, 93, 26 So. 2d 361. In other words, the Congress has not undertaken so to legislate that, under the circumstances present in this case, the Federal liens would have priority over the municipal liens." (R.22)

This language takes the dispute from the realm of failing "to give full effect to the Federal lien statute," as claimed by the Petitioner (P. 9).

The Petitioner once again, as in the courts below, resorts to Sec. 3466, this time in a footnote (P. 16-17). The reference is to *Spokane County v. United States,* 279 U. S., 80, 91, and it is stated that "---this Court seems to have agreed---" (P. 17). The language of this Court actually was: "Moreover, it is contended by the government that the relative priorities could have been maintained in that case by setting apart sufficient funds to pay the mortgage before paying the Federal taxes and then providing for payment of the State taxes out of the sum so set apart."

The Spokane case was decided under Sec. 3466, having to do with persons adjudged insolvent, and has no application here (R. 20). Furthermore, the Court did not in its opinion agree with the government's contention. It af-

firmed the judgment of the majority of the Supreme Court of the State of Washington.

The respondent also wishes to note that the remedy suggested would not resolve the anomaly, but only unjustly take funds from the mortgagee involved.

II

THERE IS NO CONFLICT OF DECISION

The decision of the Supreme Court of Errors of Connecticut, does not rest on the theory that municipal liens are paramount to Federal liens (P. 16). The decision has made a practical application of legal principles and statutes to a given set of facts. To reason otherwise, as has the Petitioner in the Superior Court of Connecticut and in the Supreme Court of Errors of Connecticut, would be to continue the creating of anomalies which are not meant to exist under our laws.

There is no conflict and the states are not at liberty to preempt the paramount taxing power of the United States of America, as feared by the Petitioner (P. 18).

III

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW

This case does not set forth any problem which makes for an important question of Federal law. The only reason for its present status is that there was not enough money to pay all debts. On this basis alone there cannot arise a Federal problem such as is claimed by the Petitioner.

BLEED THROUGH- POOR COPY

The determination of the case in Connecticut does no harm to the petitioner. The Statutes of the United States nowhere state absolute priority.

CONCLUSION

For the foregoing reasons it is respectively submitted that this petition for writ of certiorari be denied.

Respectfully submitted,

WILLIAM S. GORDON, JR.,
Counsel for Respondent

Of Counsel
HAROLD KOPLOWITZ

June, 1953